



The Trusted Choice

Michigan Association of Insurance Agents
Representing Independent Agents

March 4, 2014
Testimony before Senate Insurance Committee
SB 715

Dear Chairman Hune and Committee Members,

My name is Scott Hummel representing the Michigan Association of Insurance Agents, 800 plus Independent Insurance Agencies from all across the state. Along with me today is Richard Pease from the Pease Insurance Agency in Howard City. Rich is a member of our Technical Issues Task Force that addresses policy coverages.

Our sincere thanks for your time. MAIA encourages your support of SB 715.

A problem exists where government agencies require, as a condition of doing business, that an insured supply evidence of insurance on preprinted forms supplied by the government agency. These forms often times alter, expand or modify the terms of the subject policy.

An insurance producer that is asked to provide these types of altered certificates may not legally do so. The Department of Insurance and Financial Services (DIFS) has made it clear that an insurance producer may not add terms or clauses to a certificate of insurance which alter, expand or otherwise modify the terms of the actual policy unless authorized by the insurer. The department may seek disciplinary measures against producers who do this. Despite this prohibition, government entities have continued to insist upon certificates of insurance that do not merely act as evidence of insurance, but seek to modify the terms and conditions of coverage.

Insurance producers are being placed in an untenable position. If they do not comply with the request to issue an improper certificate, their insurance client will not be allowed to perform work for the party asking for the certificate. Unfortunately, an insurance producer that complies with the law and refuses to issue an improper certificate may often lose the client, who will find another insurance producer willing to ignore the law and issue the improper certificate. It happens. It shouldn't but I think we all understand the economics behind the problem.

SB 715 will remedy this problem by making it a violation of law for any person to request the issuance of a certificate of insurance that contains any false or misleading information.

Scott Hummel
Michigan Association of Insurance Agents



Detail and Attachments:

MDOT (and some municipal entities) insist that only its captioned “certificate of insurance” forms, 2020 and 1304a (Attachment A) are acceptable when contracting with the department to do MDOT “work.” These “certificates” require the contractor’s insurance agent (and company) to attest that they will provide cancellation notice to MDOT on behalf of the “subscribing insurance company” and add certain governmental entities as additional insured’s to the policy beyond the policy language. The Michigan Association of Insurance Agents (MAIA) objects to this practice on several counts and believes this requirement substantially increases our agent producer liability for the following reasons:

- 1) The ACORD 25 Certificate of Liability Insurance (2014/01) (Attachment B) is nationally-recognized as the only permissible evidence of liability insurance. The latest revisions purposely eliminate any cancellation privilege to certificate holders to comply with a growing numbers of national state statutes/regulations that contend intentional/unintentional cancellation notice often isn’t an existing policy provision – thus the certificate erroneously expands coverage as would providing language on the certificate indicating the holder are Additional Insured’s when the policy does not include the holder.
- 2) ACORD warns subscribing insurance agents through software vendor licensing that use of earlier ACORD 25 editions (containing cancellation privilege) is a copyright violation/licensing violation and further, alteration of the latest ACORD 25s is unacceptable;
- 3) DIFS Bulletin No. 2008-11-INS (Attachment C) warns “Although producers may feel pressured or obligated to provide certificates that revise or misrepresent the actual policy coverage, they are violating Michigan’s Insurance Code when they do so. Producers violate the Code when they issue a certificate of insurance that misrepresents the insurance coverage provided under the insurance policy and are subject to administrative fines and license suspension or revocation. MCL 500.1239.” There are penalties for the producer who may alter a certificate, but there are no penalties in statute that would prevent the one who would pressure an agent to engage in a violation of the Commissioner’s Bulletin.

If this were just an MDOT problem, a change of internal policy might be the most reasonable approach and there are internal Administration discussions to that end. (The simple answer would be for governmental entities to require contractors in the contract to include the entity as an additional insured on any required insurance. The state of Hawaii and city of Atlanta include insurance cancellation notice in a contract). However, since other entities replicate the practice, a more comprehensive approach is needed that would codify the DIFS Director’s Bulletin from 2008 and also provide for penalties for those who practice or encourage the practice of altering certificates.

Again, SB 715, sponsored by Senator Casperson, would:

- Define a certificate of insurance;
- Prohibits a person from altering or amending a certificate of insurance that is not reflective of the policy contract;
- Provides for penalties for any person found altering a certificate or pressuring someone to alter a certificate.

There are 13 states that have adopted statute language similar to this bill since 2011 (Attachment D).

MAIA would appreciate your support for the bill.



Michigan Department
of Transportation
2020 (02/07)

CERTIFICATE OF INSURANCE FOR PERMITTED ACTIVITIES

IN MICHIGAN DEPARTMENT OF TRANSPORTATION RIGHT OF WAY

ALL INSURANCE INFORMATION MUST BE SUBMITTED ON FORM 2020. ANY OTHER FORM IS INVALID.

The subscribing insurance company certifies that insurance of the types and limits of liability listed below have been issued to the insured named below for the policy period indicated.

Such insurance, here certified, is written in accordance with the company's regular policies and endorsements subject to the company's applicable manuals of rules and rate, except that the insurance shall include, but not be limited to, coverage for: (a) underground damage to facilities due to drilling and excavating with mechanical equipment; and (b) collapse or structural injury to structures due to blasting or explosion, excavation, tunneling, pile driving, cofferdam work, or building moving or demolition.

- (1) The subscribing company agrees to give 30 days prior written notice to the Michigan Department of Transportation in the event of cancellation or reduction in coverage by the Insurance Company for reasons other than nonpayment of premium.
- (2) The subscribing company agrees to give 10 days prior written notice to the Michigan Department of Transportation in the event of cancellation by the Insurance Company for nonpayment of premium.
- (3) The subscribing company agrees to give immediate written notice to the Michigan Department of Transportation in the event the contractor cancels or reduces the coverage of any insurance certified below.

NAME OF INSURED	TELEPHONE NUMBER
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ADDRESS	Street	City	State	Zip Code
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CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY DATES (MM/DD/YY)		CATEGORY	MIN. LIMITS	POLICY AMOUNTS	
			EFFECTIVE	EXPIRATION				
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL <input type="checkbox"/> OCCURRENCE				GENERAL AGGREGATE PRODUCTS - COMP/OP AGG. PERSONAL AND ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXP(Any one person)	\$ 2,000,000 \$ 1,000,000 		A
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> <input type="checkbox"/>				COMBINED SINGLE LIMIT OR BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	\$ 1,000,000 \$ 500,000 \$ 1,000,000 \$ 1,000,000		B
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> <input type="checkbox"/>				EACH OCCURRENCE AGGREGATE	\$ 1,000,000 \$ 1,000,000		D

ADDITIONAL INSURED:

The State of Michigan, Michigan Transportation Commission, Department of Transportation, and governmental bodies performing permit activities under a maintenance contract, and all officers, agents and employees of all the above, for claims arising out of, under, or by reason of operations covered by the permit issued to the permittee. If applicable, _____ (county) and County Road Commission are also insured.

NAME OF INSURANCE COMPANIES AFFORDING COVERAGE COMPANY LETTER COMPANY LETTER COMPANY LETTER	NAME OF AGENCY ADDRESS
BY: (Authorized Representative Signature)	TITLE DATE TELEPHONE NUMBER

INSURANCE REQUIREMENTS FOR ACTIVITIES PERFORMED
PURSUANT TO A PERMIT ISSUED BY THE
MICHIGAN DEPARTMENT OF TRANSPORTATION

The permittee shall have as a minimum an insurance policy as described below, and the insurance company shall be licensed by the State of Michigan.

1. The insurance shall include, but not be limited to, coverage for:
 - Underground damage to facilities due to drilling and excavating with mechanical equipment, and
 - Collapse or structural injury to structures due to blasting or explosion, excavation, tunneling, pile driving, cofferdam work, or building moving or demolition, and
 - According to the following formula: **A+B or A+C or D**
 - A. Commercial general liability: The minimum limits shall be \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - B. Combined single limit for bodily injury and property damage liability: \$1,000,000 each occurrence
 - C. Automobile Liability (Minimum Limits):
 - Bodily injury: \$500,000 per person
 - \$1,000,000 each occurrence
 - Property damage: \$1,000,000 each occurrence
 - D. The insurance limits, above, may be attained through an umbrella policy.
2. NO WORK IS TO BE PERFORMED WITHOUT THE ABOVE POLICIES BEING CURRENTLY IN EFFECT.
3. Should the policy be canceled or expire, all activities authorized by the permit shall cease and the authority to continue operating within the right of way is deemed of no effect pending reinstatement of such policy in conformity with the above.
4. Proof of insurance shall be the Michigan Department of Transportation (MDOT) Certificate of Insurance for Permitted Activities in MDOT Right of Way form (form #2020), or should the department elect, a copy of the policy or both.
5. All certificates of insurance will be received by the permit issuing offices unless otherwise arranged with the Lansing Utilities and Permits Section.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Bulletin No. 2008-11-INS

In the matter of

Property and Casualty Certificates of Insurance

**Issued and entered
this 15th day of August 2008
by Ken Ross
Commissioner**

Certificates of insurance, evidences of insurance, and similar insurance policy-related documents (collectively "certificates") serve a valuable informational purpose and provide a courtesy summary of the terms of a property and casualty insurance policy to an insured or third party. The Office of Financial and Insurance Regulation (OFIR) is aware, however, that some insurance producers have been asked to provide certificates that purport to amend, extend, or alter the coverage of the underlying policy. Although producers may feel pressured or obligated to provide certificates that revise or misrepresent the actual policy coverage, they are violating Michigan's Insurance Code ("Code") when they do so.

Producers violate the Code when they issue a certificate of insurance that misrepresents the insurance coverage provided under the insurance policy and are subject to administrative fines and license suspension or revocation. MCL 500.1239, provides:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Furthermore, MCL 500.2005(a), also prohibits a producer or insurer from misrepresenting the terms of an insurance contract, and violations can result in the suspension or revocation of a license and other administrative penalties. That section provides:

An unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact does any of the following:

- (a) Misrepresents the terms, benefits, advantages, or conditions of an insurance policy.

* * *

A certificate of insurance is typically a mere synopsis of the policy. Where it makes statements that go beyond actual coverage, a company risks changing the policy's terms. These changes are usually accomplished by a printed rider or endorsement form.

To prevent confusion and disputes over coverage, an insurer may well consider including prominently on the certificate a statement such as, "This certificate of insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by policy number _____ issued by _____."

The usefulness of such a statement is evidenced by the laws of several states which require it.

OFIR urges all insurers to forward a copy of this bulletin to their producers and to remind their producers of the consequences of providing improper certificates.

Any questions regarding this bulletin should be directed to:

Office of Financial and Insurance Regulation

Attn: Karl Benghauser

611 West Ottawa Street

P.O. Box 30220

Lansing, MI 48909-7720

Phone: (517) 373-4484

Toll Free: (877) 999-6442

A handwritten signature in dark ink, appearing to be 'K. Ross' or similar, written over a horizontal line.

Ken Ross

CERTIFICATES OF INSURANCE -STATE STATUTES and/or REGULATIONS. (as of 11-10-2013)

State	Statute	Administrative Reg/Rule	Filed Form	Form ACORD	Form Referenced ISO	"Industry Standard" Required	Info (1)	"No Amendment Harmless"	"No Agent Opinion"	"No Pressure Others"	Sanctions
AL		6/5/2004	X	X	X		X	X			Fine/Suspension/Revocation
AK		None Known									
AZ		1/11/2011	X*				X	X			Fine/Suspension/Revocation/F
AR		12/7/2010	X*				X	X		X	Administrative Penalties
CA	1/15/2011					X					
CO		12/1/2007				X		X			Violation
CT		11/9/2010					X	X			Adm Fine/Suspension/Revocati
DE		None Known									
D.C.		None Known									
FL	7/1/2012	2/21/2003					X	X			Adm Fine/License Discipline
GA	5/1/2011	5/26/2103	X	X	X		X	X	X	X	Fine/Suspension/Revocation/F
HI		12/1/2010					X	X			Civil, Adm, Criminal Sanctions
ID	7/1/2012	6/22/2012	X	X	X		X	X		X	Administrative/Criminal Penalt
IL		2/11/2008				X	X	X	X	X	Adm Fine/Suspension/Revocati
IN	7/1/2013	4/3/2009		X	X		X	X			Adm Fine/Suspension/Revocati
IA		7/13/2010	X	X	X		X	X			Unfair Trade Practice
KS	7/1/2007	8/30/2010	X			X	X	X			None Provided
KY	7/2/1975	4/21/2011	X	X	X		X	X			Fine/Suspension/Revocation
LA	1/1/2011	2/3/2009	X	X	X		X	X		X	Adm/Criminal Penalties
ME		None Known									
MD	10/1/2012	11/7/2008	X	X	X		X	X	X	X	None Provided
MA		4/11/2011	X*				X	X			Law Violation/E&O Exposure
MI		8/15/2008				X	X	X			Adm Fine/Suspension/Revocati
MN	8/1/2009	6/20/2008	X	X	X		X	X			Civil Penalties/License Revocati
MS		3/24/2009	X	X	X		X	X			Adm Penalties/Lic Susp/Revoca
MO	7/1/2011	2/8/2010	X	X	X		X	X		X	Adm/Civil Action/Level 2 Violat
MT		8/11/2010	X				X	X			Adm Penalties/Lic Susp/Revoca
NEB		12/7/2010	X				X	X			E&O Exposure
NV		None Known									
NH	4/1/2011	7/29/2009	vs 30 da'			X	X	X		X	License Revocation/E&O Exposi
NJ		2/28/2011	X				X	X			Civil Penalties/Lic Revocation/S
NM		1/14/2011	X	X	X		X	X	X		Adm Penalties/Lic Susp/Revoca
NY		1/27/1998	X*	X			X	X			Disciplinary Measures
NC		2/1/2010	X	X			X	X			Fine/Suspension/Revocation
ND	4/1/2011	4/5/2010	X	X	X		X	X		X	Administrative Action
OH		3/12/2009		X	X		X	X	X		Penalties/Lic Suspension/Revoc

